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Attorneys for Plaintiff  
MARJORIE JOHNSON

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT COURT OF CALIFORNIA

In re

CASE NO.: 08-42426 TT

GREGORY F. GRIFFIN, an individual,  
Debtor.

Chapter 7

MARJORIE JOHNSON, an individual,  
Plaintiff,

COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBTS  
(11 U.S.C. §523(A)(2) and (4))

vs.

GREGORY F. GRIFFIN, an individual,  
Defendant.

**I. PARTIES**

1. Plaintiff Marjorie Johnson ("Johnson") is an individual who resides in the city of Alamo, Contra Costa County, California.

2. Defendant Gregory F. Griffin ("Griffin") is an individual who resides in the city of Alamo, Contra Costa County, California and a debtor in the above-captioned case.

## II. JURISDICTION AND VENUE

3. This adversary proceeding is a core proceeding in the above-captioned case pursuant to 28 U.S.C. § 157(B)(2)(I) because it is a matter concerning the dischargeability of particular debts.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 24 of the United States District Court for the Northern District of California.

5. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1409(a).

## III. GENERAL ALLEGATIONS

6. Johnson has known defendant Greg Griffin for many years and at all times prior to December, 2005 reposed significant confidence and trust in Griffin's character, integrity and fidelity.

7. Beginning in approximately 1982 and prior to co-founding and becoming the Chief Executive Officer of First Blackhawk Financial in 1992, Griffin was an employee of a stock brokerage and managed pension fund clients for Dean Witter and E.F. Hutton. During this period, Griffin frequently spoke to Johnson of the financial success that he had attained for his clients managing pension funds.

8. At all relevant times herein, Griffin actively worked to secure the trust and confidence of Johnson. Griffin frequently remarked that he considered Ms. Johnson to be "family."

9. In 1991, Johnson was going through a rather tumultuous divorce. Among the many problems she had to deal with as result of the divorce, Johnson was concerned about transferring her share of her soon-to-be ex-husbands retirement benefits to a personal retirement account for her. Griffin served as an expert witness for Johnson during the divorce proceedings concerning the eventual division and delivery of those funds.

10. During the same time period, Griffin ingratiated himself to Johnson by consoling her during this difficult time in her life and assured her that he would look out for her interests.

1 Griffin represented that he could and would obtain an excellent return on any funds that Johnson  
2 came into as a result of any property settlement in her divorce, and that said funds would be  
3 secure in his hands.

4 11. Johnson eventually did select Griffin to invest the one-half interest in her ex-  
5 husband's retirement account that was awarded to her in the divorce proceedings. On September  
6 27, 1991, Johnson authorized her then attorneys, the Law Offices of O'Brien, Sullivan & Jensen,  
7 to make a draft payable to her and then to have it hand delivered to Griffin.

8 12. The O'Brien, Sullivan firm delivered a check in the amount of \$125,812.61 (the  
9 "Retirement Funds") to Griffin's office located at 710 Broadway, Suite 200, in Walnut Creek,  
10 California.

11 13. Griffin agreed to accept the Retirement Funds from Johnson and further agreed to  
12 prudently invest the Retirement Funds to create a nest egg for Johnson's retirement. Griffin  
13 advised Johnson that he believed that he would need and would work hard to grow the fund to a  
14 total of about \$400,000 in order to provide for Johnson's active retirement. At the time, Johnson  
15 was a school teacher who was forty-eight years old.

16 14. In fact, Griffin never intended to safely and prudently invest Ms. Johnson's  
17 Retirement Funds. Although Griffin invested approximately \$50,000 in an ill-conceived second  
18 mortgage and subsequently lost all or most of that money, the remainder was, unbeknownst to  
19 Johnson, used as seed money for the new company that Griffin co-founded in 1992: First  
20 Blackhawk Financial. Once the company was in operation, Griffin used Ms. Johnson's money as  
21 operating capital for First Blackhawk. When Griffin created and operated First Blackhawk, using  
22 at least in part Johnson's Retirement Funds, Johnson became a *de facto* client of First Blackhawk.  
23 Griffin personally benefited from the money invested by Johnson.

24 15. Unaware of the truth about Griffin's misuse of the Retirement Funds, Johnson  
25 remained grateful to Griffin for the assistance he gave her in early 1990s, which included acting  
26 as her expert consultant in the divorce proceedings to help in quantifying her ex-husband's  
27 financial interest in his law firm's pension plan, and going to court to ask that Johnson be  
28 provided with a settlement or an income from the divorce proceeding. Griffin further assisted  
Johnson with her personal bankruptcy.

1           16. In the intervening years, Griffin repeatedly but falsely assured Johnson that her  
2 money was prudently safely invested. For example, on or about April 28, 1994 Griffin  
3 represented to Robert S. Gebhardt, an attorney Johnson consulted regarding a personal  
4 bankruptcy, that Griffin was managing Johnson's one-half interest in her ex-husband's pension  
5 fund (i.e., the Retirement Funds), that the pension fund was held in an ERISA qualified rollover  
6 account, and would not be subject to creditor claims. Griffin also represented that he would be  
7 willing to guarantee Johnson's fees for bankruptcy counsel.

8           17. Exploiting the trust that he had developed with Johnson over the years, Griffin  
9 never provided Johnson with written statements of her account in the nearly fifteen years that he  
10 held the Retirement Funds and claimed to be investing the Funds on Johnson's behalf.

11           18. In December of 2005, Johnson confronted a life-threatening illness. Shortly after  
12 that time, Johnson wrote to Griffin to inquire about the status of her account and noting that she  
13 would be forced to retire soon and needed to get her affairs in order. After several requests to  
14 meet, Griffin finally relented and, obviously concerned about Johnson's reaction to what Griffin  
15 planned to tell her, met with Johnson in a public coffee house where people knew him. At that  
16 meeting, Griffin told Johnson that her retirement funds were presently valued at a total of  
\$80,000 and that she could not get at any of this money.

17           19. Because the Retirement Funds have not been prudently invested and have not  
18 earned a reasonable return while in Griffin's care Johnson has very little money to fund her  
19 retirement. Additionally, Griffin's unlawful use of the Retirement Funds may have tax  
20 consequences or other legal consequences because the Retirement Funds were not, contrary to  
21 Griffin's representations, placed in an Erisa-qualified plan.

22           20. At all times mentioned herein, Griffin has served as an investment advisor and  
23 fiduciary for Johnson. Johnson placed her trust in Griffin that he would at all times act openly,  
24 carefully and honestly in advising her on investment opportunities and protecting her assets.  
25 Johnson relied on Griffin to look after her best interests.

26           21. Johnson is informed and believes that Griffin did not at all times act in her best  
27 interests, and was not entirely open, careful and honest in his course of dealings with her.  
28

1 Johnson is informed and believes that, among other things, Griffin: (1) used and misappropriated  
2 her money for unauthorized purposes; (2) falsely stated that certain of her loans would be  
3 adequately secured, when in fact there was no security or the security was inadequate; (3) failed  
4 to disclose the money he solicited would be used for seed money and operating capital and  
5 projects that were inadequately funded and would likely default. Had Griffin fulfilled his  
6 fiduciary obligations and been forthright and disclosed this material information, Johnson would  
7 not have participated in or made the following investments or loans, and would not have incurred  
8 all of the losses she has suffered in connection therewith.  
9

10 22. In or about September, 1991, Griffin orally offered to take the Retirement Funds  
11 from Johnson and to invest the Retirement Funds in a reasonable and prudent manner in order to  
12 provide a nest egg for Johnson's golden years. Johnson accepted Griffin's offer and caused the  
13 Retirement Funds to be delivered to Griffin so that he could invest the funds.

14 23. Griffin breached the oral contract by failing to invest Johnson's money in safe and  
15 prudent investments. Instead, aside from one ill-conceived \$50,000 second mortgage investment  
16 that was lost, Griffin used the Retirement Funds to open and operate First Blackhawk.

17 24. A confidential relationship existed because of the trust and confidence reposed by  
18 Johnson in the integrity and fidelity of Griffin. When Griffin agreed to accept the Retirement  
19 Funds that Johnson, because of her faith in Griffin's integrity and his repeated overtures to her,  
20 offered to Griffin for investment, a fiduciary relationship was created.

21 25. Griffin breached his fiduciary obligations to Johnson by failing to invest Johnson's  
22 money in a prudent and safe manner, by failing to keep Johnson informed of the status of her  
23 Retirement Funds so she could make reasonably informed decisions regarding her investments,  
24 and by using the Retirement Funds to open and operate First Blackhawk.

25 26. In order to induce Johnson to surrender the Retirement Funds to him, Griffin  
26 falsely represented that he would use his best efforts to prudently and safely invest the Funds  
27 with the goal of growing the Retirement Funds to the amount of \$400,000, or as close thereto as  
28 possible, in order to provide for Johnson's active retirement.

27 27. In reliance on Griffin's representation that he would invest the Retirements Funds

1 with the objective of growing them, Johnson directed that the Retirement Funds be delivered to  
2 Griffin.

3 28. At the time Griffin induced Johnson to deliver the Retirement Funds to him for  
4 investing, Griffin had no intention of investing the Funds and growing them to \$400,000. In fact,  
5 Griffin planned to use the Retirement Funds to open and operate the company that would become  
6 Blackhawk Financial. Johnson was ignorant of the true facts and had she known of Griffin's  
7 secret intentions, Johnson would not have caused the Retirement Funds to be delivered to Griffin.

8 29. Since the Retirement Funds were delivered to him in 1991, Griffin has continued  
9 to deceive Johnson and has falsely represented, *inter alia*, that the Retirement Funds were  
10 prudently invested in an Erisa-qualified plan and were, for that reason, beyond the reach of  
11 Johnson's personal creditors. Griffin made the foregoing representations in order to induce  
12 Johnson to allow Griffin to maintain control over the Retirement Funds. Johnson relied on  
13 Griffin's representations that the Retirement Funds were in an Erisa-qualified plan and allowed  
14 Griffin to maintain control over the Retirement Funds.

15 30. Because of Griffin's fraud, the Retirement Funds have not been prudently invested  
16 and have not earned a reasonable return while in Griffin's care. As a result, Johnson, who for  
17 health reasons is being forced to retire prematurely, has very little money to fund her retirement.  
18 Additionally, Griffin's fraud may have tax consequences or other legal consequences because the  
19 Retirement Funds were not, contrary to Griffin's representations, placed in an Erisa-qualified  
20 plan.

21 31. In perpetuating the fraud and failing to invest Johnson's Retirement Funds in a  
22 reasonably prudent manner, and instead using the Retirement Funds to open and operate First  
23 Blackhawk, Griffin's actions were fraudulent, oppressive and malicious and were undertaken  
24 with conscious disregard for the rights of Johnson.

25 32. At the time that Griffin represented to Johnson that Griffin would safely and  
26 prudently invest the Retirement Funds with the goal of growing the Funds, Griffin had no  
27 reasonable grounds for believing his representation to be true.

28 33. Griffin breached his legal and contractual duties to Johnson by failing to invest the  
pension funds in a reasonably prudent manner, by failing to properly account for the Retirement

1 Funds so that Johnson could adequately manage her investment portfolio and risk, and by using  
2 the Retirement Funds to open and operate First Blackhawk.

3 34. By failing and refusing to properly invest Johnson's Retirement Funds, by refusing  
4 to keep Johnson reasonably informed about the status of her investments, and by using the  
5 Retirement Funds to open and operate First Blackhawk, Griffin unreasonably interfered with  
6 Johnson's right to receive the benefits of her contract for the management of her Retirement  
7 Funds.

8 35. Griffin, without Johnson's knowledge or consent, used the Retirement Funds to  
9 open and operate First Blackhawk Financial, thereby unlawfully converting the Retirement Funds  
10 to Griffin's own purposes.

11 36. Instead of investing Johnson's pension fund in a qualified retirement account for  
12 Johnson's benefit, Griffin used the pension funds to advance his own individual goals in order to  
13 unjustly enrich himself.

14 37. On September 7, 2006 Johnson filed a Complaint against Griffin in Contra Costa  
15 Superior Court, Case No. MSC06-01752, alleging eight causes of action, including: fraud,  
16 negligent misrepresentation, constructive fraud, and conversion. A true and correct copy of the  
17 Complaint is attached hereto as Exhibit A.

18 38. On February 1, 2008, Judgment was entered in favor of Johnson and against  
19 Griffin in Contra Costa Superior Court, Case No. MSC06-01752 in the amount of \$457,163.25,  
20 plus interest accruing from the date of entry of judgment and post-judgment costs incurred. A  
21 true and correct copy of the Judgment is attached hereto as Exhibit B.

22 39. On February 27, 2008, Johnson filed a Notice of Judgment Lien with the State of  
23 California. A true and correct copy of the Judgment Lien is attached hereto as Exhibit C.

24 ///

25 ///

26 ///



1 **FIRST CLAIM FOR RELIEF**

2 **(Money Obtained by False Pretenses – 11 U.S.C. § 523(a)(2))**

3 40. Plaintiff realleges paragraphs 1 through 39 of this complaint as though fully set  
4 forth herein.

5 41. Griffin knowingly and intentionally made material misrepresentations, and failed  
6 to disclose material information, in the course of inducing Johnson to invest her Retirement  
7 Funds.

8 42. Johnson detrimentally relied on Griffin's false representations and omissions and  
9 as a result sustained loss and damage as set forth above.

10 43. Griffin is indebted to Johnson for obtaining property by false pretenses, false  
11 representations, and actual fraud in amounts according to proof.

12 44. Defendant's debts are nondischargeable under 11 U.S.C. § 523(a)(2).

13 **SECOND CLAIM FOR RELIEF**

14 **(Debts Arising from Debtor's Fraud or Defalcation While Acting as Fiduciary –**

15 **11 U.S.C. § 523(a)(4))**

16 45. Plaintiff realleges paragraphs 1 through 44 of this complaint as though fully set  
17 forth herein.

18 46. On information and belief, Griffin used monies entrusted to him by Johnson for his  
19 personal benefit as seed money and operating capital.

20 47. Johnson relied on Griffin to look after her best interests in entrusting him with her  
21 Retirement Funds. In this way, Johnson trusted Griffin to represent her carefully and honestly in  
22 the course of her business dealings. As a result, Griffin owed Johnson fiduciary duties of  
23 fairness, honesty, good faith and full disclosure to Johnson of any and all matters pertaining to  
24 Johnson's financial matters.  
25  
26  
27  
28



1 48. Griffin breached the fiduciary duties he owed Johnson.

2 49. Griffin is indebted to Johnson on debt for fraud and defalcation while acting in a  
3 fiduciary capacity in an amount according to proof.

4 50. Griffin's debts to Johnson are nondischargeable under 11 U.S.C. § 523(a)(4).

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

9 1. On all Claims for Relief, for a determination that Defendant's debts to Johnson are  
10 nondischargeable in an amount according to proof.

11 2. For reasonable costs and attorneys' fees.

12 3. For each other and further relief as the Court may deem just and proper.  
13

14 Respectfully Submitted,

15 SCHWARTZ & CERA LLP  
16

17  
18 Dated: May 14, 2009

By: 

Scott R. Lovernick, Esq.  
Attorneys for Plaintiff  
MARJORIE JOHNSON  
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25  
26  
27  
28

# EXHIBIT A

# EXHIBIT B

COPY

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Attorneys for Plaintiff  
MARJORIE JOHNSON

FILED  
SEP 7 2006  
K. TORRE CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
By \_\_\_\_\_ Deputy Clerk

IN THE SUPERIOR COURT  
IN AND FOR THE COUNTY OF CONTRA COSTA

MARJORIE JOHNSON, an individual,

Johnson,

vs.

GREGORY F. GRIFFIN, an individual,  
FIRST BLACKHAWK FINANCIAL  
CORPORATION, a California Corporation,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. C06-01752

COMPLAINT FOR BREACH OF ORAL  
CONTRACT, BREACH OF FIDUCIARY  
DUTY, FRAUD, NEGLIGENT  
MISREPRESENTATION,  
CONSTRUCTIVE FRAUD, BREACH OF  
THE IMPLIED COVENANT OF GOOD  
FAITH AND FAIR DEALING,  
CONVERSION, UNJUST ENRICHMENT  
AND CONSTRUCTIVE TRUST

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 33

COMES NOW Plaintiff MARJORIE JOHNSON and alleges against defendants and  
each of them as follows:

1. Plaintiff Marjorie Johnson ("Johnson") is an individual and a resident of Alamo,  
California.

2. Defendant Gregory F. Griffin ("Griffin") is an individual who, on information and  
belief, resides in the San Ramon Valley area of Contra Costa County.

3. Defendant First Blackhawk Financial Corporation ("First Blackhawk") is, on  
information and belief, a California Corporation with its principal place of business in  
Danville, California. On information and belief, First Blackhawk operates as a mortgage  
company that actively seeks funds from investors that First Blackhawk then lends to people

1 and businesses.

2 4. The true names and capacities of defendants sued as Does 1 through 10, inclusive,  
3 are unknown to Johnson, who sues these defendants by such fictitious names. Johnson will  
4 seek leave to amend this complaint to show their true names and capacities when the same  
5 have been ascertained. Johnson is informed and believes and thereon alleges that each of  
6 these Defendants designated herein as a Doe was in some manner responsible for the  
7 occurrences alleged in this Complaint and proximately caused damages to Johnson.

8 5. At all times, the defendants, and each of them, were acting as the agents and/or  
9 co-conspirators of each of the other defendants and in performed the acts alleged herein in  
10 their capacities as agents and co-conspirators.

11 GENERAL ALLEGATIONS

12 6. Johnson has known defendant Greg Griffin for many years and at all times prior to  
13 December, 2005 reposed significant confidence and trust in Griffin's character, integrity and  
14 fidelity.

15 7. Beginning in approximately 1982 and prior to co-founding First Blackhawk  
16 Financial in 1992, Griffin was an employee of a stock brokerage and managed pension fund  
17 clients for Dean Witter and E.F. Hutton. During this period, Griffin frequently spoke to  
18 Johnson of the financial success that he had attained for his clients managing pension funds.

19 8. At all relevant times herein, Griffin actively worked to secure the trust and  
20 confidence of Johnson. Griffin frequently remarked that he considered Ms. Johnson to be  
21 "family."

22 9. In 1991, Johnson was going through a rather tumultuous divorce. Among the  
23 many problems she had to deal with as result of the divorce, Johnson was concerned about  
24 transferring her share of her soon-to-be ex-husbands retirement benefits to a personal  
25 retirement account for her. Griffin served as an expert witness for Johnson during the  
26 divorce proceedings concerning the eventual division and delivery of those finds.

27 10. During the same time period, Griffin ingratiated himself to Johnson by consoling  
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1 interests. Griffin represented that he could and would obtain an excellent return on any funds  
2 that Johnson came into as a result of any property settlement in her divorce, and that said  
3 funds would be secure in his hands.

4 11. Johnson eventually did select Griffin to invest the one-half interest in her ex-  
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6 September 27, 1991, Johnson authorized her then attorneys, the Law Offices of O'Brien,  
7 Sullivan & Jensen, to make a draft payable to her and then to have it hand delivered to  
8 Griffin.

9 12. The O'Brien, Sullivan firm delivered a check in the amount of \$125,812.61 (the  
10 "Retirement Funds") to Griffin's office located at 710 Broadway, Suite 200, in Walnut  
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12 13. Griffin agreed to accept the Retirement Funds from Johnson and further agreed  
13 to prudently invest the Retirement Funds to create a nest egg for Johnson's retirement.  
14 Griffin advised Johnson that he believed that he would need and would work hard to grow  
15 the fund to a total of about \$400,000 in order to provide for Johnson's active retirement. At  
16 the time, Johnson was a school teacher who was forty-eight years old.

17 14. In fact, Griffin never intended to safely and prudently invest Ms. Johnson's  
18 Retirement Funds. Although Griffin invested approximately \$50,000 in an ill-conceived  
19 second mortgage and subsequently lost all or most of that money, the remainder was,  
20 unbeknownst to Johnson, used as seed money for the new company that Griffin co-founded  
21 in 1992: First Blackhawk Financial. Once the company was in operation, Griffin used Ms.  
22 Johnson's money as operating capital for First Blackhawk. When Griffin created and  
23 operated First Blackhawk, using at least in part Johnson's retirement funds, Johnson became  
24 a *de facto* client of First Blackhawk.

25 15. Unaware of the truth about Griffin's misuse of the Retirement Funds, Johnson  
26 remained grateful to Griffin for the assistance he gave her in early 1990s, which included  
27 acting as her expert consultant in the divorce proceedings to help in quantifying her ex-  
28 husband's financial interest in his law firm's pension plan, and going to court to ask that

1 Johnson be provided with a settlement or an income from the divorce proceeding. Griffin  
2 further assisted Johnson with her personal bankruptcy.

3 16. In the intervening years, Griffin repeatedly but falsely assured Johnson that her  
4 money was prudently safely invested. For example, on or about April 28, 1994 Griffin  
5 represented to Robert S. Gebhardt, an attorney Johnson consulted regarding a personal  
6 bankruptcy, that Griffin was managing Johnson's one-half interest in her ex-husband's  
7 pension fund (i.e., the Retirement Funds), that the pension fund was held in an ERISA  
8 qualified rollover account, and would not be subject to creditor claims. Griffin also  
9 represented that he would be willing to guarantee Johnson's fees for bankruptcy counsel.

10 17. Exploiting the trust that he had developed with Johnson over the years, Griffin  
11 never provided Johnson with written statements of her account in the nearly fifteen years that  
12 he held the Retirement Funds and claimed to be investing the Funds on Johnson's behalf.

13 18. In December of 2005, Johnson confronted a life-threatening illness. Shortly after  
14 that time, Johnson wrote to Griffin to inquire about the status of her account and noting that  
15 she would be forced to retire soon and needed to get her affairs in order. After several  
16 requests to meet, Griffin finally relented and, obviously concerned about Johnson's reaction  
17 to what Griffin planned to tell her, met with Johnson in a public coffee house where people  
18 knew him. At that meeting, Griffin told Johnson that her retirement funds were presently  
19 valued at a total of \$80,000 and that she could not get at any of this money at the present  
20 time.

21 19. Because the Retirement Funds have not been prudently invested and have not  
22 earned a reasonable return while in Griffin's care Johnson, who for health reasons is being  
23 forced to retire prematurely, has very little money to fund her retirement. Additionally,  
24 Griffin's unlawful use of the Retirement Funds may have tax consequences or other legal  
25 consequences because the Retirement Funds were not, contrary to Griffin's representations,  
26 placed in an Erisa-qualified plan.

27 FIRST CAUSE OF ACTION

28 (Breach of Oral Contract)



20. Johnson incorporates and realleges paragraphs 1 through 19, above, as though fully set forth herein.

21. In or about September, 1991, Griffin orally offered to take the Retirement Funds from Johnson and to invest the Retirement Funds in a reasonable and prudent manner in order to provide a nest egg for Johnson's golden years. Griffin further represented that he could and would grow the Retirement Funds to about \$400,000 to help provide for Johnson's active retirement. Johnson accepted Griffin's offer and caused the Retirement Funds to be delivered to Griffin so that he could invest the funds.

22. Griffin, both individually and as the agent of First Blackhawk, breached the oral contract by failing to invest Johnson's money in safe and prudent investments. Instead, aside from one ill-conceived \$50,000 second mortgage investment that was lost, Griffin used the Retirement Funds to open and operate First Blackhawk.

23. As a result of Griffin's and First Blackhawk's breach of the oral agreement, Johnson has suffered general and special damages, including but not limited to severe emotional distress and worry, according to proof.

## SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty)

24. Johnson incorporates and realleges paragraphs 1 through 23, above, as though fully set forth herein.

25. A confidential relationship existed because of the trust and confidence reposed by Johnson in the integrity and fidelity of Griffin. When Griffin agreed to accept the Retirement Funds that Johnson, because of her faith in Griffin's integrity and his repeated overtures to her, offered to Griffin for investment, a fiduciary relationship was created.

26. Griffin, both individually as an agent of First Blackhawk, breached his fiduciary obligations to Johnson by failing to invest Johnson's money in a prudent and safe manner, by failing to keep Johnson informed of the status of her Retirement Funds so she could make reasonably informed decisions regarding her investments, and by using the Retirement Funds to open and operate First Blackhawk.

1           27. As a result of Griffin's breach, Johnson has suffered general and special  
2 damages, including but not limited to severe emotional distress and worry, according to  
3 proof.

4                                   THIRD CAUSE OF ACTION

5                                   (Fraud)

6           28. Johnson incorporates and realleges paragraphs 1 through 27, above, as though  
7 fully set forth herein.

8           29. In order to induce Johnson to surrender the Retirement Funds to him, Griffin ,  
9 both individually and as the agent of First Blackhawk Financial, falsely represented that he  
10 would use his best efforts to prudently and safely invest the Funds with the goal of growing  
11 the Retirement Funds to the amount of \$400,000, or as close thereto as possible, in order to  
12 provide for Johnson's active retirement.

13           30. In reliance on Griffin's representation that he would invest the Retirements  
14 Funds with the objective of growing them to \$400,000, Johnson directed that the Retirement  
15 Funds be delivered to Griffin.

16           31. At the time Griffin induced Johnson to deliver the Retirement Funds to him for  
17 investing, Griffin had no intention of investing the Funds and growing them to \$400,000. In  
18 fact, Griffin planned to use the Retirement Funds to open and operate the company that  
19 would become Blackhawk Financial. Johnson was ignorant of the true facts and had she  
20 known of Griffin's secret intentions, Johnson would not have caused the Retirement Funds to  
21 be delivered to Griffin.

22           32. Since the Retirement Funds were delivered to him in 1991, Griffin has continued  
23 to deceive Johnson and has falsely represented, *inter alia*, that the Retirement Funds were  
24 prudently invested in an Erisa-qualified plan and were, for that reason, beyond the reach of  
25 Johnson's personal creditors. Griffin made the foregoing representations in order to induce  
26 Johnson to allow Griffin to maintain control over the Retirement Funds. Johnson relied on  
27 Griffin's representations that the Retirement Funds were in an Erisa-qualified plan and  
28 allowed Griffin and First Blackhawk to maintain control over the Retirement Funds.

1           33. Because of Griffin's fraud, the Retirement Funds have not been prudently  
2 invested and have not earned a reasonable return while in Griffin's care. As a result,  
3 Johnson, who for health reasons is being forced to retire prematurely, has very little money  
4 to fund her retirement. Additionally, Griffin's fraud may have tax consequences or other  
5 legal consequences because the Retirement Funds were not, contrary to Griffin's  
6 representations, placed in an Erisa-qualified plan.

7           34. As a result of Griffin's fraud, Johnson has suffered general and special damages,  
8 including but not limited to severe emotional distress, anxiety, malaise, mortification, and  
9 worry, according to proof.

10          35. In perpetuating the fraud and failing to invest Johnson's Retirement Funds in a  
11 reasonably prudent manner, and instead using the Retirement Funds to open and operate First  
12 Blackhawk, Griffin's and First Blackhawk's actions were fraudulent, oppressive and  
13 malicious and were undertaken with conscious disregard for the rights of Johnson. Punitive  
14 damages should be assessed against Griffin and First Blackhawk to make an example of said  
15 defendants and to deter such conduct in the future.

16                                   FOURTH CAUSE OF ACTION

17                                   (Negligent Misrepresentation)

18          36. Johnson incorporates and realleges paragraphs 1 through 35, above, as though  
19 fully set forth herein.

20          37. At the time that Griffin represented to Johnson that Griffin would safely and  
21 prudently invest the Retirement Funds with the goal of growing the Funds to as much as  
22 \$400,000, Griffin had no reasonable grounds for believing his representation to be true.

23          38. In reliance on Griffin's representation that he would invest the Retirement  
24 Funds with the objective of growing them to \$400,000, Johnson directed that the Retirement  
25 Funds be delivered to Griffin so that he could so invest them.

26          39. Since the Retirement Funds were delivered to him in 1991, Griffin has made  
27 additional representations including, *inter alia*, that the Retirement Funds were prudently  
28 invested in an Erisa-qualified plan and were, for that reason, beyond the reach of Johnson's

1 personal creditors. These representations were made for the purpose of inducing Johnson to  
2 allow Griffin to retain the Retirement Funds and were made without a reasonable basis for  
3 believing them to be true.

4 40. Because of Griffin's misrepresentations, the Retirement Funds have not been  
5 prudently invested and have not earned a reasonable return while in Griffin's care. As a  
6 result, Johnson, who for health reasons is being forced to retire prematurely, has very little  
7 money to fund her retirement. Additionally, Griffin's misrepresentations may lead to tax  
8 consequences or other legal consequences because the Retirement Funds were not, contrary  
9 to Griffin's representations, placed in an Erisa-qualified plan.

10 41. As a result of Griffin's misrepresentations, Johnson has suffered general and  
11 special damages, including but not limited to severe emotional distress, anxiety, malaise,  
12 mortification, and worry, according to proof.

13 42. In making the false representations regarding the status of the Retirement Funds  
14 and failing to invest Johnson's Retirement Funds in a reasonably prudent manner, and  
15 instead using the Retirement funds to open and operate First Blackhawk, Griffin's and First  
16 Blackhawk's actions were fraudulent, oppressive and malicious and were undertaken with  
17 conscious disregard for the rights of Johnson. Punitive damages should be assessed against  
18 Griffin and First Blackhawk to make an example of said defendants and to deter such  
19 conduct in the future.

#### 20 FIFTH CAUSE OF ACTION

##### 21 (Constructive Fraud)

22 43. Johnson incorporates and realleges paragraphs 1 through 41, above, as though  
23 fully set forth herein.

24 44. Johnson entered into a confidential relationship with Griffin and First Blackhawk,  
25 reposing in them significant trust to manage her Retirement Funds and earn a reasonable  
26 return on such funds in order to provide for Johnson's active retirement.

27 45. Griffin, both individually and as the agent of First Blackhawk, breached his legal  
28 and contractual duties to Johnson by failing to invest the pension funds in a reasonably

1 prudent manner, by failing to properly account for the Retirement Funds so that Johnson  
2 could adequately manage her investment portfolio and risk, and by using the Retirement  
3 Funds to open and operate First Blackhawk.

4 46. As a result of the foregoing breaches, Johnson has suffered general and special  
5 damages including, but not limited to severe emotional distress and worry, according to  
6 proof.

7 47. In failing to invest Johnson's Retirement Funds in a reasonably prudent manner,  
8 and instead using the Retirement funds to open and operate First Blackhawk, Griffin's and  
9 First Blackhawk's actions were fraudulent, oppressive and malicious and were undertaken  
10 with conscious disregard for the rights of Johnson. Punitive damages should be assessed  
11 against Griffin and First Blackhawk to make an example of said defendants and to deter such  
12 conduct in the future.

#### 13 SIXTH CAUSE OF ACTION

##### 14 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

15 48. Johnson incorporates and realleges paragraphs 1 through 46, above, as though  
16 fully set forth herein.

17 49. California law implies in every contract a covenant of good faith and fair  
18 dealing. The implied covenant requires that each party refrain from doing any unreasonable  
19 act that prevents the other party of the contract from obtaining the benefits thereof.

20 50. By failing and refusing to properly invest Johnson's Retirement Funds, by  
21 refusing to keep Johnson reasonably informed about the status of her investments, and by  
22 using the Retirement Funds to open and operate First Blackhawk, Griffin and First  
23 Blackhawk unreasonably interfered with Johnson's right to receive the benefits of her  
24 contract for the management of her Retirement Funds.

25 51. As a result of the foregoing breaches, Johnson has suffered general and special  
26 damages including, but not limited to, severe emotional distress and worry, according to  
27 proof.

28 52. In failing to invest Johnson's Retirement Funds in a reasonably prudent manner,

1 and instead using the Retirement Funds to open and operate First Blackhawk, Griffin's and  
2 First Blackhawk's actions were fraudulent, oppressive and malicious and were undertaken  
3 with conscious disregard for the rights of Johnson. Punitive damages should be assessed  
4 against Griffin and First Blackhawk to make an example of said defendants and to deter such  
5 conduct in the future.

6 SEVENTH CAUSE OF ACTION

7 (Conversion)

8 53. Johnson incorporates and realleges paragraphs 1 through 51, above, as though  
9 fully set forth herein.

10 54. Griffin, without Johnson's knowledge or consent, used the Retirement Funds to  
11 open and operate First Blackhawk Financial, thereby unlawfully converting the Retirement  
12 Funds to Griffin's and First Blackhawk's own purposes.

13 55. At the time of the conversion, Defendants knew that Johnson was relying on  
14 them to prudently invest the Retirement Funds in order to grow a nest egg for Johnson's  
15 active retirement. It was accordingly foreseeable that their conversion of the Retirement  
16 Funds would cause Johnson severe emotional distress.

17 56. As a result of Defendants' conversion of the Retirement Funds, Johnson has  
18 suffered general and special damages including, but not limited to, severe emotional distress,  
19 anxiety, malaise, mortification and worry, according to proof.

20 57. In failing to invest Johnson's Retirement Funds in a reasonably prudent manner,  
21 and instead converting the Retirement Funds to open and operate First Blackhawk, Griffin's  
22 and First Blackhawk's actions were fraudulent, oppressive and malicious and were  
23 undertaken with conscious disregard for the rights of Johnson. Punitive damages should be  
24 assessed against Griffin and First Blackhawk to make an example of said defendants and to  
25 deter such conduct in the future.

26 EIGHTH CAUSE OF ACTION

27 (Unjust Enrichment and Constructive Trust)

28 58. Johnson incorporates and realleges paragraphs 1 through 56, above, as though

1 fully set forth herein.

2 59. Instead of investing Johnson's pension fund in a qualified retirement account for  
3 Johnson's benefit, Griffin and First Blackhawk used the pension funds to advance their own  
4 individual goals in order to unjustly enrich themselves.

5 60. Johnson requests that the Court impose a constructive trust on Griffin's  
6 ownership interest in First Blackhawk to secure restitution to Johnson in the full amount of  
7 the pension funds entrusted to Griffin and upon any such other assets or revenues as Griffin  
8 and/or First Blackhawk may have gained by virtue of their misuse of Johnson's Retirement  
9 Funds.

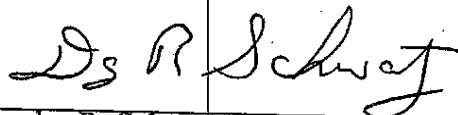
10 PRAYER

11 WHEREFOR, Plaintiff Marjorie Johnson prays:

- 12 (1) For general and special damages according to proof;  
13 (2) For punitive damages;  
14 (3) For the imposition of a constructive trust upon the assets of defendants;  
15 (4) For attorney's fees and costs; and  
16 (5) For such other and further relief as the court may deem proper.

17 Dated: September 7, 2006

SCHWARTZ & CERA LLP

18  
19  
20 

21 Douglas R. Schwartz

22 Attorneys for Plaintiff  
23 MARJORIE JOHNSON  
24  
25  
26  
27  
28



1 DOUGLAS R. SCHWARTZ (State Bar No. 98666)  
2 ROBERT J. SCOTT, Jr. (State Bar No. 151775)  
3 SCHWARTZ & CERA LLP  
4 44 Montgomery Street, Suite 3850  
5 San Francisco, California 94104  
6 Telephone: (415) 956-2600  
7 Facsimile: (415) 438-2655

8 Attorneys for Plaintiff  
9 MARJORIE JOHNSON

FILED

2008 FEB -6 A 9:36

K. KIRBY, CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CALIF.

BY: S. KRICKEN, Deputy Clerk

10 IN THE SUPERIOR COURT  
11 IN AND FOR THE COUNTY OF CONTRA COSTA

12 MARJORIE JOHNSON, an individual,

13 Johnson,

14 vs.

15 GREGORY F. GRIFFIN, an individual,  
16 FIRST BLACKHAWK FINANCIAL  
17 CORPORATION, a California Corporation,  
18 and DOES 1 through 10, inclusive,

19 Defendants.

CASE NO. MSC06-01752

[Proposed]  
JUDGMENT BY COURT AFTER  
DEFAULT

Date: January 25, 2008  
Time: 9:00 a.m.  
Dept.: 2

Complaint Filed: September 7, 2006

1 Defendants Gregory F. Griffin and First Blackhawk Financial Corporation failed to appear for  
2 a case management conference on December 14, 2007. The Court issued an order to show cause for  
3 failure to appear and notified the defendants that failure to appear for hearing on January 3, 2008  
4 would cause the Court to strike defendants' answers. Defendants failed to appear on January 3, 2008  
5 and their answers were stricken. The matter was set for hearing on default on January 25, 2008.

6 The Court, having considered the plaintiff's brief, the declarations of Marjorie Johnson and  
7 Robert J. Scott, Jr., and the evidence contained therein, is hereby ordered that:

8 Judgment be entered in favor of Plaintiff Marjorie Johnson against Defendants Gregory F.  
9 Griffin and First Blackhawk Financial Corporation in the amount of \$400,000 as damages,  
10 prejudgment interest pursuant to Civil Code Section 3287(b) in the amount of \$55,342.60, and costs  
11 of suit in the amount of \$ Per Cost Bill

12 Interest on the amount of this judgment will accrue at 10% per annum from the date that  
13 judgment is entered until it is satisfied.

14 It is so ordered.

15  
16  
17 Date: Feb. 1, 2008  
January 25, 2008

BARBARA ZUNIGA

Hon. Barbara Zuniga  
Judge of the Superior Court

Exhibit C

**NOTICE OF JUDGMENT LIEN**

FOLLOW INSTRUCTIONS CAREFULLY (front and back of form)

**A. NAME & PHONE OF FILER'S CONTACT (optional)**

Scott R. Lovernick, Esq. (415) 956-2600

**B. SEND ACKNOWLEDGMENT TO: (NAME AND ADDRESS)**

Schwartz & Cera LLP  
ATTN: SCOTT R. LOVERNICK, ESQ.  
44 Montgomery Street, Suite 3850  
San Francisco, CA 94104

**08-7149139153****02/27/2008 17:00**

SOS

**FILED**CALIFORNIA  
SECRETARY OF STATE

16078860002

UCC 1 FILING

THIS SPACE FOR FILING OFFICE USE ONLY

**1. JUDGMENT DEBTOR'S EXACT LEGAL NAME** -Insert only one name, either 1a or 1b. Do not abbreviate or combine names.**1a. ORGANIZATION'S NAME**

First Blackhawk Financial Corporation

**1b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE NAME****SUFFIX****1c. MAILING ADDRESS**

4145 Blackhawk Plz. Cir. Ste. 201

**CITY**

Danville

**STATE**

CA

**POSTAL CODE**

94506

**COUNTRY**

US

**2. JUDGMENT CREDITOR'S NAME** - Do not abbreviate or combine names.**2a. ORGANIZATION'S NAME****2b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE****SUFFIX**

Johnson

Marjorie

Ms.

**2c. MAILING ADDRESS**

1470 Danville Blvd., #7

**CITY**

Alamo

**STATE**

CA

**POSTAL CODE**

94507

**COUNTRY**

US

**3. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.****A. Title of court where judgment was entered:** Superior Court of Contra Costa County**B. Title of the action:** Johnson v. Griffin, First Blackhawk Financial Corporation**C. Number of this action:** MSC06-01752**D. Date judgment was entered:** February 6, 2008**E. Date of subsequent renewals of judgment (if any):****F. Amount required to satisfy judgment at date of this notice:** \$ 457,163.25**G. Date of this notice:** 02-21-08**4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

SIGNATURE - SEE INSTRUCTION NO. 4 Schwartz &amp; Cera LLP

FOR: Judgment Debtor Marjorie Johnson

Dated: 02-21-08

(If not indicated, use same as date in item 3G.)

FILING OFFICE COPY

NOTICE OF JUDGMENT LIEN (FORM JL1) (Rev. 6/01)  
Approved by the Secretary of State

**JUDGMENT LIEN ADDENDUM**

FOLLOW INSTRUCTIONS CAREFULLY (FRONT AND BACK OF FORM)

**6. NAME OF JUDGMENT DEBTOR: (NAME OF FIRST DEBTOR ON RELATED JUDGMENT LIEN)**

6a. ORGANIZATION'S NAME First Blackhawk Financial Corporation				
6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	

**6. ADDITIONAL JUDGMENT DEBTOR – insert only one name (6a or 6b):**

6a. ORGANIZATION'S NAME				
6b. INDIVIDUAL'S LAST NAME Griffin	FIRST NAME Gregory	MIDDLE NAME F.	SUFFIX Mr.	
6c. MAILING ADDRESS 203 Hawk Court	CITY Alamo	STATE CA	POSTAL CODE 94507	COUNTRY US

**7. ADDITIONAL JUDGMENT DEBTOR – insert only one name (7a or 7b):**

7a. ORGANIZATION'S NAME				
7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**8. ADDITIONAL JUDGMENT DEBTOR – insert only one name (8a or 8b):**

8a. ORGANIZATION'S NAME				
8b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
8c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**9. ADDITIONAL JUDGMENT CREDITOR – insert only one name (9a or 9b):**

9a. ORGANIZATION'S NAME				
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
9c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

**10. ADDITIONAL JUDGMENT CREDITOR – insert only one name (10a or 10b):**

10a. ORGANIZATION'S NAME				
10b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
10c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

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STATE OF CALIFORNIA

**UCC Filing Acknowledgement**

03/07/2008

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SCHWARTZ & CERA LLP  
44 MONTGOMER ST., SUITE 3850  
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File Date: **02/27/2008**  
Lapse Date: **02/27/2013**

File Time: **17:00**

Debtor(s):  
ORGANIZATION

**FIRST BLACKHAWK FINANCIAL CORPORATION**

**4145 BLACKHAWK PLZ. CIR. STE. 201 DANVILLE CA USA  
94506**

INDIVIDUAL

**GRIFFIN, GREGORY, F., MR.**

**203 HAWK COURT ALAMO CA USA 94507**

Secured Party(ies):  
INDIVIDUAL

**JOHNSON, MARJORIE, , MS.**

**1470 DANVILLE BLVD., #7 ALAMO CA USA 94507**

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SECRETARY OF STATE  
STATE OF CALIFORNIA

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44 MONTGOMER ST., SUITE 3850  
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